

September 1, 2009

Operations Division
Regulatory Branch (South)
ID No. LRL-2008-684-pgj

Mr. Daniel Peake
Division of Environmental Analysis
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622

Dear Mr. Peake:

This is in regard to your request for authorization to perform aquatic habitat restoration, establishment and enhancement activities on Town Branch, a Relatively Permanent Water (RPW) with perennial flow, in Clark County, Kentucky. Town Branch is tributary to Strodes Creek, a RPW perennial stream, which is tributary to the Licking River, a Traditionally Navigable Water (TNW). The project includes filling 3,574 linear feet and permanently inundating 2,288 linear feet of poor quality, perennial stream. The project would create 7,054 linear feet of excellent quality, perennial stream with an average forested riparian buffer of 30 - 50 feet from top of each stream bank. The project would have a sanitary sewer line running parallel to the eastern stream bank, within 15-20 feet of top of bank, for the project length. The purpose of the project is to provide mitigation in advance of the discharge of fill material into waters of United States (U.S.) associated with Kentucky Transportation Cabinet (KYTC) projects within the Licking River Basin. The submitted information was reviewed to determine whether a Department of the Army (DA) permit will be required under the provisions of Section 404 of the Clean Water Act.

Based upon the information submitted, your proposal to discharge fill into Town Branch for the purpose of restoring, establishing and/or enhancing aquatic habitat is authorized under the provisions of 33 CFR 330 Nationwide Permit (NWP) No. 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities, as published in the Federal Register, March 12, 2007. Under the terms of this authorization you must comply with the following General Conditions:

1. Terms of Nationwide Permit No. 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities;
2. Nationwide Permit General Conditions; and

3. Water Quality Certification (WQC) Conditions for Nationwide Permit No. 27 issued by the Kentucky Division of Water (KDOW). If required under these conditions, you must obtain individual WQC.

KYTC must also comply with the following Special Conditions:

1. Implement the Mitigation Plan, titled: "Mitigation Plan for the Town Branch Advance Mitigation Site, Clark County, Kentucky", dated July, 2009.
2. Provide a revised Conservation Easement, consistent with the Kentucky Division of Water's (KDOW's) conservation easement template, to the Corps within **30 days** from the date of acceptance of the subordination agreement. The conservation easement must include **60-day** prior notification to the Corps of proposed property or conservation easement transfer to another entity.
3. File and record with the Clark County, Kentucky, clerk's office an approved conservation easement, permanently protecting the Town Branch Advance Mitigation Site, within one year from the date of this authorization.

This authorization will be effective as soon as we receive your signed acceptance of the conditions and you have obtained individual WQC, if required by the KDOW. Please sign and date the duplicate copy of this letter, in the space provided, and return the signed copy in the enclosed envelope. Note that we also perform periodic inspections to ensure compliance with our permit conditions and applicable federal laws. The enclosed Compliance Certificate should be signed and returned when the project is completed.

This decision is valid for two years from the date of this letter. If your project is not completed within this two-year period or if your project is modified, you must contact us for another permit determination. A copy of this letter is being sent to the KDOW, the Kentucky Department of Fish and Wildlife Resources, the U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency.

Attached to this verification that your project is authorized by NWP No. 27 is an approved jurisdictional determination. If you are not in agreement with that approved JD, you can make an administrative appeal under 33 CFR 331. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Lakes and Rivers Division Office at the following address:

Mr. Michael Montone
Great Lakes and Ohio River Division
CELRD-CM-O
550 Main Street, Rm 10032
Cincinnati, OH 45201-3222
(513) 684-6212

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **October 30, 2009.**

It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

If you have any questions, please contact this office by writing to the above address, ATTN: CELRL-OP-FS, or by calling me at (502)-315-6687. All correspondence pertaining to this matter should refer to our ID No. LRL-2008-684-pgj.

Sincerely,

Patricia A. Grace-Jarrett, Ph.D.
Senior Project Manager
Regulatory Branch

Enclosures

(I accept the conditions of this authorization)

Kentucky Department of Fish and Wildlife Resources

Date

Grace-Jarrett/OP-FS/wr/Town Branch NWP 27

ADDRESSES FOR COORDINATING AGENCIES

Mr. Lee Andrews
Supervisor
U.S. Fish and Wildlife Service
330 West Broadway, Room 266
Frankfort, KY 40601

Mr. Todd Bowers
Wetlands Regulatory Section
EPA Region IV
61 Forsyth Street
Atlanta, GA 30303-8960

Ms. Joyce Fry
401 Program
Energy and Environment Cabinet
Division of Water
200 Fair Oaks
Frankfort, KY 40601

Mr. Mike Hardin
Assistant Director, Division of Fisheries
Kentucky Department of Fish & Wildlife Resources
#1 Sportsman's Lane
Frankfort, KY 40601

Compliance Certification:

Permit Number: LRL-2008-684-pgj

Name of Permittee: Mr. Danny Peake

Date of Issuance: September 1, 2009

Upon completion of the activity authorized by this permit and any mitigation required by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
CELRL-OP-FN
P.O. Box 59
Louisville, Kentucky 40201

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date